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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,656	01/25/2001	Wayne McElhaney JR.	629	3470

7590

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EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 03/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/769,656

Applicant(s)

McElhaney Jr.

Examiner

Khoa Tran

Art Unit

3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Dec 13, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

Art Unit: 3634

## **DETAILED ACTION**

### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on December 13, 200 have not been approved. In particular, there is no support in the original disclosure for the inclusion of a pin, a wing nut and a slot arrangement as proposed to be shown. It is further noted that applicant fails to point out any portions of the original disclosure providing basis for the proposed showing.

### ***Specification***

The specification is objected to because it fails to define the specific elements that are the “means” for supporting various articles, thus it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

Art Unit: 3634

the invention. With respect to claim 1, "conventional vehicle lift rack", lines 1-2 is indefinite because what constitutes "conventional" has not been defined or established. Further, the recitation of the various "means" beginning line 9 is no more than a catalog of elements that fails to properly include the necessary structural cooperative relationship. Claim 3 is indefinite because it is not known what constitutes an "otherwise conventional lift rack", lines 2-3. Further, it is not clear what constitutes "boxlike", line 4. The negative limitation of claim 4 is incomplete and thus indefinite. The punctuation appears to be incorrect and/or incomplete. Relative to claim 5, lines 2-3, the phrase "in order to . . . currently commercially available" is indefinite and should be deleted.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Buckley. At the outset, it should be noted that the claims are of such breadth that they read on the hanging tool storage container for a ladder of Buckley. It should be noted the claims need only to "read on" something in the prior art for anticipation to exist. Further, the patentability is based on what the devices and not how it is intended to be used.

Art Unit: 3634

Buckley discloses a tool storage container comprising:

a storage volume (102) formed by a bottom connected to a plurality of vertical sidewalls, see Figure 1, and having an articulated lid (118);

support means (400) connected to the storage volume such that the hook (404) is extending cantilever outwardly from the support means and the organizer will be supported by a gravity impingement;

a support means (112) for supporting a pneumatic driving tool;

a support means (116) for supporting tools;

a support means (106, 104) for supporting cups;

a support means (110) for supporting rags; and

a slidable storage drawer (200) provided along the lower surface of the container, thereby allowing for additional storage for small items.

Claims 1 and 3, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Walker. At the outset, it should be noted that the claims are of such breadth that they read on the hanging storage box of Walker. It should be noted the claims need only to "read on" something in the prior art for anticipation to exist. Further, the patentability is based on what the devices and not how it is intended to be used.

Walker discloses a cantilever hanging box comprising a storage volume box (10) having a lockable lid (44), wherein the inside volume of the box providing support means for articles such as tools, cups, rags, and pneumatic driving tools, or the like. See Figure 2.

Art Unit: 3634

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley as applied to claims 1 and 2 above, and further in view of McGarrah. McGarrah teaches a pair of adjustable hooks (16) and a lockable lid (24). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the lid of Buckley with the provision of a lockable lid and provide the organizer with a pair of adjustable hooks as taught by Walker in order to have a lockable lid to prevent theft to articles that are stored inside the box and the adjustable hook is to enable the organizer to adjust to different heights according to the support.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley in view of McGarrah as applied to claims 3-4 and 6-10 above, and further in view of Hall. Hall teaches a notoriously old and well-known per se the laterally adjusting hook (12) that adjusts by a threaded screw (50) and a wing nut (52). See Figure 4. Considering the disclosure of Buckley and the teaching of McGarrah and Hall, taken as a whole, it would have been obvious to one of ordinary in the art at the time of the invention was made to modify the hooks of McGarrah with the

Art Unit: 3634

provision of hooks that is laterally adjustable as taught by Hall in order to have the hook adjust laterally according to the size of the support means because it is well within the level of skill of one of ordinary skill to utilize known features of the art for the purpose that they are known. Further, it is expected as a part of the level of one of ordinary skill to discover the optimum or workable ranges of the adjusting size of the hook for a particular use. Accordingly, it would have been an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill in the art to discover and dimensions the workable range of the adjustable support hook to be between 3 inches to 5-1/2 inches for its intended use, thus producing no new and unexpected results.

Claims 3, 4, 6, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Bishop. Perkins discloses a tool box organizer comprising a storage volume formed in a boxlike cantilever fashion. The storage box having a lockable lid (21), a support means (36) for transporting the tool box to various locations, a lateral support plate (37) extending horizontally from the containment volume for supporting tools, a supporting plate (37) having a plurality of different sizes and shapes of slots for accommodating different sizes of tools or articles to be supported thereon, see column 3, lines 43-48, and a slidable storage drawer (52) located along the lower surface of the container. Perkins does not teach the support means being a hook for mounting on a cross bar. However, Bishop teaches the support means of hooks (37) on the rear of a storage box for hanging the tool box on a cross bar by gravity impingement. See Figures 1 and 3. It would have been obvious to one of ordinary skill in the art at the time of the

Art Unit: 3634

invention was made to provide the tool box organizer of Perkins with the provision of hooks hanging means as taught by Bishop in order to enable to the tool box to be mounted or hung on a cross bar or the like.

Claims 1, 2, 9, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Bishop as applied to claims 3, 4, 6, 8, and 10 above, and further in view of Yemini. Yemini teaches a plurality of different sizes of apertures on the tool sheet-like plate for accommodating different sizes of tools or articles. See Figure 1. Further, the tool plate of Yemini has an electrical supporting means (64) for supporting electrical tools to be hung therefrom. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the tool support plate of Perkins with the tool plate as taught by Yemini in order to have a support plate that can support various hardware articles including supporting electrical items hanging therefrom the plate.

Claims 1, 2, 9, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Bishop as applied to claims 3, 4, 6, 8, and 10 above, and further in view of Schmidt. Schmidt teaches a lateral support plate (27) having tools support means (28) for supporting elongated tools, a support means (34) for supporting a beverage or cups, a support means (38) for supporting rags or towels, and a support means (32 and 33) for supporting driving tools. See Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the tool support plate of Perkins with the tool plate as taught by Schmidt in order to enable to support varieties of different articles thereon the plate.



Art Unit: 3634

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Bishop as applied to claims 3, 4, 6, 8, and 10 above, and further in view of Hall. Bishop does not teach the adjustable hook. However, Hall teaches a notoriously old and well-known per se the laterally adjusting hook (12) that adjusts by a threaded screw (50) and a wing nut (52). See Figure 4. It would have been obvious to one of ordinary in the art at the time of the invention was made to modify the hooks of Bishop with the provision of hooks that is laterally adjustable as taught by Hall in order to selectively adjust according to the size of the support means because it is well within the level of skill of one of ordinary skill to utilize known features of the art for the purpose that they are known. Further, it is expected as a part of the level of one of ordinary skill to discover the optimum or workable ranges of the adjusting size of the hook for a particular use. Accordingly, it would have been an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill in the art to discover and dimensions the workable range of the adjustable support hook to be between 3 inches to 5-1/2 inches for it intended use, thus producing no new and unexpected results.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schmidt, Hallsen, Barthelman, Corban, Kearney, Jr., Bailey et al., Allsop et al., Rayhle, Brown, Wagner, Collins, Quynatile, S. G. Mead, and Wiederrich et al., are cited to show devices having similar configurations of design.

Art Unit: 3634

***Response to Amendment***

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicants are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

Art Unit: 3634

I hereby certify that this correspondence is being facsimile transmitted to the Patent and  
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Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran

February 22, 2002



DANIEL P. STODOLA  
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